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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,781	05/31/2005	Pascal DesBois	102695-102	3167
27267 7590 02/02/2009 WIGGIN AND DANA LLP ATTENTION: PATENT DOCKETING ONE CENTURY TOWER, P.O. BOX 1832 NEW HAVEN, CT 06508-1832			EXAMINER O HERN, BRENT T	
			ART UNIT	PAPER NUMBER
			1794	
			MAIL DATE	DELIVERY MODE
			02/02/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/518,781

**Applicant(s)**

DESBOIS ET AL.

**Examiner**

Brent T. O'Hern

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claims***

1. Claims 1-12 are pending.

## **WITHDRAWN OBJECTIONS/REJECTIONS**

2. All objections/rejections of record in the Office action mailed 5 August 2008, pp. 2-5, paras. 2-5, have been withdrawn due to Applicant's amendments in the Paper filed 15 December 2008.

## **NEW REJECTIONS**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 3 and 4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Dependent claim 3, line 3 claims 45 to 60% monounsaturated fatty acids, however, independent claim 1 establishes the lower limit of oleic acid (a monounsaturated fatty acid) as being 47%. Thus, dependent claim 3 is broader than independent claim #1.
5. Dependent claim 4, line 3 claims 10 to 30% polyunsaturated fatty acids, however, independent claim 1 establishes the lower limit of linoleic acid (a polyunsaturated fatty acid) as being 12%. Thus, dependent claim 4 is broader than independent claim #1.

6. Claim 10 recites the limitation "the palm oil and rapeseed oil" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim. These oils are not set forth in independent claim #1.

Clarification and/or correction required.

***Claim Rejections - 35 USC § 102***

7. Claims 1 and 3-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Kuchan et al. (US 6,136,858).

Kuchan ('858) teaches a vegetable fat composition comprising fatty acids and less than 0.4% of water based on the total weight of the composition, wherein at least 90% of the fatty acids have 16 to 18 carbon atoms, from 12 to 18% of the fatty acids are linoleic acid, from 47 to 51% of the fatty acids are oleic acid, 45-60% monounsaturated fatty acids, 10-30% polyunsaturated fatty acids with less than 1%/0.3% trans fatty acids, 3 to 7% linolenic acid with the ratio of omega-6 to omega-3 fatty acids being less than 7 (See col. 5, Chart I, palm olein without water being 98+% C16 and C18 with 48.1% monounsaturated oleic acid and 13.2% of polyunsaturated, omega-6 linoleic acid and columns 5-6, Chart II, with the "invention" without water being 90+% C16 and C18 having 34-48% oleic acid, 17% omega-6, linoleic acid and 3.2% omega-3, linolenic acid. Since the palm oil and "invention" oils disclosed in the above noted charts are not hydrogenated they are substantially free if not completely free of trans fats. The omega-6/omega-3 ratio is illustrated in Chart II. Trans fats are known to be very rare in nature and not present in refined, bleached and deodorized oils. Trans fats are known to be generated in a hydrogenation reaction. The oils with high concentrations of oleic

*acid are advantageous over oils with higher levels of linoleic and linolenic acid since oleic acid is more stable as it only has one double bond as opposed to the other fatty acids. Additionally, oleic acid still provides a liquid oil since oleic acid is not a saturated fat like stearic and palmitic acid.).*

The phrase "in that it contains, optionally fractionated palm oil and rapeseed oil" in claim 9, lines 2-3 is not limiting since the limitations are not required.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 2 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuchan et al. (US 6,136,858) in view of IDRIS et al., *Evaluation of Shortenings Based on Various Palm Oil Products*, 1373 Journal of the Science of Food and Agriculture 46 (1989) No. 4, Barking, Essex, Gr. Britain (See Applicant's IDS filed 5/23/2005).

Kuchan ('858) teaches the composition discussed above and further teaches a composition containing vitamins, salts and dyes (*See col. 9, Tables II and III with the  $\beta$ -carotene presenting a strong color which is interpreted as dyeing the composition.*), however, fails to expressly disclose the composition comprising 25 to 30% saturated fatty acids relative to the total fatty acids, palm and rapeseed oil being in respective the

proportion of between 30:70 and 50:50, further comprising emulsifiers and flavourings and having a melting point between 35 and 45 C.

However, Idris teaches a vegetable fat/food product with a similar fatty acid profile (*See p. 483 Table 1, formulations 2C and 3C.*) as discussed above and taught by Kuchan ('858) and the palm oil and the rapeseed oil being in the respective proportions of between 30:70 and 50:50, with salt and flavourings added to the oil (*See p. 483 Table 1, formulations 2C and 3C comprising blends of palm and rapeseed oil.*

➤ *Group 2*

- |    |   |
|----|---|
| 2A | { 50% Palm stearin (IV 44)                |
|    | { 50% Soya bean oil                       |
| 2B | { 50% Palm stearin (IV 44)                |
|    | { 50% Cottonseed oil                      |
| 2C | { 50% Palm stearin (IV 44)                |
|    | { 50% Low erucic acid rapeseed (LEAR) oil |

*Group 3*

- |    |   |
|----|---|
| 3A | { 60% Palm stearin (IV 44)                |
|    | { 40% Soya bean oil                       |
| 3B | { 60% Palm stearin (IV 44)                |
|    | { 40% Cottonseed oil                      |
| 3C | { 60% Palm stearin (IV 44)                |
|    | { 40% Low erucic acid rapeseed (LEAR) oil |

*See Tables 2-3 where the 16:0 and 18:0 fatty acids are saturated due to zero double bonds, 16:1 and 18:1 are monounsaturated, with 18:1 being oleic acid, 18:2 being linoleic acid and 18:3 being linolenic acid.*

**TABLE 3**  
 Slip melting point, fatty acid composition and triglyceride composition of shortenings

Shortening code:	Group 1			Group 2			Group 3		
	1A	1B	1C	2A	2B	2C	3A	3B	3C
Slip melting point (°C):	44.5	45.0	44.9	44.6	45.2	45.9	45.2	46.4	45.1
Fatty acid composition (%)									
12:0	0.4	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
14:0	9.8	1.0	0.7	0.6	1.0	0.7	0.5	1.0	0.5
16:0	34.9	27.6	31.4	30.2	38.6	27.7	26.6	41.0	23.1
16:1	0.1	0.3	0.1	—	—	—	—	—	—
18:0	9.5	3.9	3.8	—	—	—	—	—	—
18:1	30.7	28.3	44.7	4.3	3.8	3.0	4.3	4.0	2.9
18:2	25.0	27.8	13.3	29.4	25.8	43.7	28.2	27.5	46.1
18:3	2.4	0.2	3.8	31.8	30.4	16.8	36.3	26.4	18.4
20:0	0.6	0.3	0.4	3.5	0.2	5.6	4.1	9.3	5.9
20:1	—	—	—	—	—	—	—	—	—
22:0	—	—	0.4	—	—	1.2	—	—	1.4
22:1	—	—	—	—	—	0.1	—	—	0.2
24:0	—	—	0.3	—	—	—	—	—	1.4

*It is known that much of the saturated fatty acids come from palm stearin. Palm stearin is the solid fraction generated by the fractionation of palm oil. The liquid fraction is separated and known to be used mostly as liquid cooking oil. The formulations have melting points of 43.9 °C and 42.3 °C as illustrated in Table 3. Salt and other materials can be formulated as disclosed in Table 2. All of the claimed percentages and proportions are disclosed in the above tables. Emulsifiers, such as lecithin, naturally found in vegetable oils is a common emulsifier due to its inherent ability to mix with both oils and water.) for the purpose of providing food with improved eating quality (See p. 482, lines 1-6.). Furthermore, blending oils/fats is common in the oil/fat industry for providing compositions with the desired melting points and performance properties.*

Therefore, it would have been obvious to provide the formulations as taught by Idris and known in the art in Kuchan ('858) in order to provide food having good quality and performance.

### ANSWERS TO APPLICANT'S ARGUMENTS

9. In response to Applicant's arguments (*pp. 7-8 of Applicant's Paper filed 15 December 2008*) that Idris does not anticipate the amended claims, it is noted that the Examiner concurs and Idris is no longer cited as a primary reference. Furthermore, none of the above arguments are directed towards limitations that Idris is cited as teaching above, thus, all arguments regarding Idris are moot.
10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brent T. O'Hern whose telephone number is (571)272-0496. The examiner can normally be reached on Monday-Thursday, 9:00-6:00.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Tarazano can be reached on (571) 272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BTO/  
Brent T. O'Hern  
Examiner  
Art Unit 1794  
January 21, 2009

/Elizabeth M. Cole/  
Primary Examiner, Art Unit 1794